

ORIGINAL

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JCS

7 UNITED STATES DISTRICT COURT  
 8 NORTHERN DISTRICT OF CALIFORNIA

9 CV11 0146 1-MJJ2

10 CRAIG YATES, an individual,

11 Plaintiff,

12 v.

13 J&E RESTAURANT; WOO JING HING;  
 14 and LING KUEN,

15 Defendants.  
 16

) CASE NO.  
 ) Civil Rights

) COMPLAINT FOR INJUNCTIVE RELIEF  
 ) AND DAMAGES:

) 1<sup>st</sup> CAUSE OF ACTION: For Denial of Access  
 ) by a Public Accommodation in Violation of the  
 ) Americans with Disabilities Act of 1990 (42  
 ) U.S.C. §12101, *et seq.*)

) 2<sup>nd</sup> CAUSE OF ACTION: For Denial of Full  
 ) and Equal Access in Violation of California  
 ) Civil Code §§54, 54.1 and 54.3

) 3<sup>rd</sup> CAUSE OF ACTION: For Denial of  
 ) Accessible Sanitary Facilities in Violation of  
 ) California Health & Safety Code §19955, *et seq.*

) 4<sup>th</sup> CAUSE OF ACTION: For Denial of  
 ) Access to Full and Equal Accommodations,  
 ) Advantages, Facilities, Privileges and/or  
 ) Services in Violation of California Civil Code  
 ) §51, *et seq.* (The Unruh Civil Rights Act)

24 DEMAND FOR JURY

1 Plaintiff CRAIG YATES, an individual, complains of defendants WOO JING HING; and  
2 LING KUEN, a.k.a. the owners of the J&E Building and alleges as follows:

3 **INTRODUCTION:**

4 1. This is a civil rights action for discrimination against persons with physical  
5 disabilities, of which class plaintiff CRAIG YATES and the disability community are members,  
6 for failure to remove architectural barriers structural in nature at defendants' J&E Building, a  
7 place of public accommodation, thereby discriminatorily denying plaintiff and the class of other  
8 similarly situated persons with physical disabilities access to, the full and equal enjoyment of,  
9 opportunity to participate in, and benefit from, the goods, facilities, services, and  
10 accommodations thereof. Plaintiff seeks injunctive relief and damages pursuant to the  
11 Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*; California Civil Code §§51,  
12 51.5 and 54, *et seq.*; and California Health & Safety Code §19955, *et seq.*

13 2. Plaintiff CRAIG YATES is a person with physical disabilities who, on or about  
14 June 20, 2010, November 11, 2010 and December 7, 2010, was an invitee, guest, patron,  
15 customer at defendants' J&E Building, in the City of San Francisco, California. At said times  
16 and place, defendants failed to provide proper legal access to the J&E Building, which is a  
17 "public accommodation" and/or a "public facility" including, but not limited to entrance, signage  
18 and restroom. The denial of access was in violation of both federal and California legal  
19 requirements, and plaintiff CRAIG YATES suffered violation of his civil rights to full and equal  
20 access, and was embarrassed and humiliated.

21 **JURISDICTION AND VENUE:**

22 3. **Jurisdiction:** This Court has jurisdiction of this action pursuant to 28 U.S.C.  
23 §1331 for violations of the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*  
24 Pursuant to pendant jurisdiction, attendant and related causes of action, arising from the same  
25 nucleus of operative facts and arising out of the same transactions, are also brought under parallel  
26 California law, whose goals are closely tied with the ADA, including but not limited to violations  
27 of California Civil Code §51, *et seq.* and §54, *et seq.*, California Health & Safety Code §19955 *et*  
28 *seq.*, including §19959; California Building Code.

1           4.     **Venue:** Venue is proper in this court pursuant to 28 U.S.C. §1391(b) and is  
2 founded on the facts that the real property which is the subject of this action is located at/near  
3 2537 24<sup>th</sup> Street, in the City and County of San Francisco, State of California, and that plaintiff's  
4 causes of action arose in this county.

5 **PARTIES:**

6           5.     Plaintiff CRAIG YATES is a "physically handicapped person", a "physically  
7 disabled person", and a "person with physical disabilities" (hereinafter the terms "physically  
8 disabled", "physically handicapped" and "person with physical disabilities" are used  
9 interchangeably, as these words have similar or identical common usage and legal meaning, but  
10 the legislative scheme in Part 5.5 of the Health & Safety Code uses the term "physically  
11 handicapped persons" and the Unruh Civil Rights Act, §§51, 51.5, 54 and 54.1, and other  
12 statutory measures refer to protection of the rights of "physically disabled persons"). Plaintiff  
13 CRAIG YATES is a "person with physical disabilities", as defined by all applicable California  
14 and United States laws. Plaintiff is a triplegic. Plaintiff CRAIG YATES requires the use of a  
15 wheelchair to travel about in public. Consequently, plaintiff CRAIG YATES is a member of  
16 that portion of the public whose rights are protected by the provisions of Health & Safety Code  
17 §19955, *et seq.* (entitled "Access to Public Accommodations by Physically Handicapped  
18 Persons") and the protections of the Unruh Civil Rights Act, Civil Code §§51 and 51.5 the  
19 Disabled Persons Act, Civil Code §54, and the Americans with Disabilities Act, 42 U.S.C.  
20 §12101, *et seq.*

21           6.     Defendants WOO JING HING; and LING KUEN (hereinafter alternatively  
22 collectively referred to as "defendants") are the owners and operators, lessors and/or lessees, or  
23 agents of the owners, lessors and/or lessees, of the public accommodation known as J&E  
24 Building, located at/near 2537 24<sup>th</sup> Street, San Francisco, California, or of the building and/or  
25 buildings which constitute said public accommodation.

7. At all times relevant to this complaint, defendants WOO JING HING; and LING KUEN, own and operate in joint venture the subject J&E Building as a public accommodation. This business is open to the general public and conducts business therein. The business is a “public accommodation” or “public facility” subject to the requirements of California Civil Code §§51, 51.5 and 54, *et seq.*, Health and Safety code §19955, *et seq.*, and the ADA, 42 U.S.C. §12101, *et seq.*

8. At all times relevant to this complaint, defendants WOO JING HING; and LING KUEN are jointly and severally responsible to identify and remove architectural barriers at the subject building pursuant to Code of Federal Regulations title 28, section 36.201(b), which states in pertinent part:

**§ 36.201 General**

(b) *Landlord and tenant responsibilities.* Both the landlord who owns the building that houses a place of public accommodation and the tenant who owns or operates the place of public accommodation are public accommodations subject to the requirements of this part. As between the parties, allocation of responsibility for complying with the obligations of this part may be determined by lease or other contract.

28 CFR §36.201(b)

**PRELIMINARY FACTUAL ALLEGATIONS:**

9. The J&E, is a restaurant, located at/near 2537 24<sup>th</sup> Street, San Francisco, California 94110. The J&E RESTAURANT, its entrance, signage and restroom, and its other facilities are each a “place of public accommodation or facility” subject to the barrier removal requirements of the Americans with Disabilities Act. On information and belief, each such facility has, since July 1, 1970, undergone “alterations, structural repairs and additions,” each of which has subjected the J&E RESTAURANT and each of its facilities, its entrance, signage and restroom to disability access requirements per the Americans with Disabilities Act Accessibility Guidelines (ADAAG), and Title 24 of the California Code of regulations (Title 24).



1           10.     On or about the year of 1979, defendants' and each of them purchased and/or  
2     took possessory control of the premises now known as J&E. At all times prior thereto,  
3     defendants' and each of them were aware of their obligation prior to the close of escrow, or upon  
4     taking possessory interest or as of July 26, 1990, that public accommodations had a duty to  
5     identify and remove architectural barriers and were aware that J&E was not accessible to the  
6     disabled. Nevertheless, defendants' and each of them, operated J&E RESTAURANT as though  
7     it was accessible.

8           11.     At all times stated herein, defendants' and each of them with the knowledge that  
9     each of them had a continuing obligation to identify and remove architectural barriers where it  
10    was readily achievable to do so, failed to adopt a transition plan to provide better and/or  
11    compliant access to the subject accommodation.

12          12.     At all times referred to herein and continuing to the present time, defendants, and  
13    each of them, advertised, publicized and held out the J&E as being handicapped accessible and  
14    handicapped usable.

15          13.     On or about June 20, 2010, November 11, 2010 and December 7, 2010, plaintiff  
16    CRAIG YATES was an invitee and guest at the subject J&E, for purposes of food and beverage.

17          14.     On or about June 20, 2010, plaintiff CRAIG YATES wheeled to the front of the  
18    J&E RESTAURANT. Plaintiff CRAIG YATES saw two (2) entrances. One had a step. One  
19    had no strike side. There was no signage to indicate how to access the subject restaurant. There  
20    was no signage relative to receiving goods and services.

21          15.     At said time and place, plaintiff CRAIG YATES stressed and strained himself in  
22    attempting to access the entrance that had no strike side (east entrance). Plaintiff CRAIG  
23    YATES also encountered excessive door pressure.

24          16.     At said time and place, plaintiff CRAIG YATES needed to use the restroom.  
25    Plaintiff CRAIG YATES encountered steps to the restroom. Plaintiff CRAIG YATES has  
26    personal knowledge that elements of the unisex restroom at the subject restaurant were not  
27    ADAAG compliant.

1           17.     On or about July 20, 2010, plaintiff CRAIG YATES wrote both the landlord and  
2 tenant about the lack of an accessible entrance. Plaintiff CRAIG YATES provided defendants  
3 with a source to secure information to take remedial measures. Plaintiff CRAIG YATES did not  
4 receive a response.

5           18.     On or about November 20, 2010, plaintiff CRAIG YATES returned and  
6 encountered the same barriers as on his initial visit to the subject restaurant as stated herein.

7           19.     On or about December 7, 2010, plaintiff CRAIG YATES returned and  
8 encountered the same barriers as on his initial visit to the subject restaurant as stated herein.

9           20.     At said time(s) and place, plaintiff CRAIG YATES noticed that not even the  
10 simplest barrier removal was undertaken (i.e., appropriate signage, and employee policy and  
11 procedure).

12           21.     Therefore, at said times and place, plaintiff CRAIG YATES, a person with a  
13 disability, encountered the following inaccessible elements of the subject J&E, which constituted  
14 architectural barriers and a denial of the proper and legally-required access to a public  
15 accommodation to persons with physical disabilities including, but not limited to:

- 16           a.     lack of directional signage to show accessible routes of travel, i.e.  
17                 entrances;
- 18           b.     lack of an accessible entrance;
- 19           c.     lack of a handicapped-accessible semi-ambulatory public restroom;
- 20           d.     lack of appropriate signage for entry;
- 21           e.     lack of appropriate signage to secure goods and services;
- 22           f.     lack of signage, policies, procedures and guidelines to ensure the persons  
23                 with disabilities to the maximum extent possible have an opportunity to  
24                 share in the same goods, services and opportunities as those afforded to  
25                 able-bodied persons; and
- 26           g.     On personal knowledge, information and belief, other public facilities and  
27                 elements too numerous to list were improperly inaccessible for use by  
28                 persons with physical disabilities.

1           22.     At all times stated herein, the existence of architectural barriers at defendants'  
2 place of public accommodation evidenced "actual notice" of defendants' intent not to comply  
3 with the Americans with Disabilities Act of 1990 either then, now or in the future.

4           23.     On or about July 20, 2010, defendant(s) were sent two (2) letters by or on behalf of  
5 plaintiff CRAIG YATES advising of their need to take immediate action to remove architectural  
6 barriers and requesting a written response upon receipt of his/her letter, promising to immediately  
7 remove the barriers and providing a date when that would be accomplished. Said letters are  
8 attached hereto collectively as exhibit "A" and incorporated by reference as though fully set forth  
9 herein. Defendants' failure to respond evidenced an intent not to seek or engage in an early and  
10 reasonable resolution of the matter.

11           24.     At all times stated herein, defendants, and each of them, did not act as reasonable  
12 and prudent landlord/tenant and were "negligent per se" or at a minimum negligent for not  
13 removing architectural barriers that would foreseeably prevent plaintiff CRAIG YATES from  
14 receiving the same goods and services as able bodied people and some of which may and did pose  
15 a threat of harm and/or personal injury to people with disabilities. Therefore as a legal result of  
16 defendants breach of duty to remove those barriers encountered by plaintiff, plaintiff suffered  
17 bodily injury.

18           25.     As a legal result of defendants WOO JING HING; and LING KUEN's failure to  
19 act as a reasonable and prudent public accommodation in identifying, removing or creating  
20 architectural barriers, policies, practices and procedures that denied access to plaintiff and other  
21 persons with disabilities, plaintiff suffered the damages as alleged herein.

1        26. As a result of the denial of equal access to defendants' facilities due to the acts and  
2 omissions of defendants, and each of them, in owning, operating and maintaining these subject  
3 public facilities, plaintiff suffered violations of plaintiff's civil rights, including but not limited to  
4 rights under Civil Code §§54, 54.1 and 54.3, and plaintiff CRAIG YATES suffered physical  
5 discomfort, bodily injury on or about June 20, 2010, including, but not limited to, fatigue, stress,  
6 strain and pain in wheeling and attempting to and/or transferring up, on, down, to, over, around  
7 and through architectural barriers. Specifically, as a legal result of defendants negligence in the  
8 design, construction and maintenance of the existing east door entrance, plaintiff suffered  
9 continuous, repetitive and cumulative trauma to his right upper extremity while attempting to gain  
10 access into the subject restaurant.

11        27. Further, plaintiff CRAIG YATES suffered emotional distress, mental distress,  
12 mental suffering, mental anguish, which includes, but is not limited to, shame, humiliation,  
13 embarrassment, anger, disappointment and worry, expectedly and naturally associated with a  
14 person with physical disabilities being denied access, all to his damages as prayed hereinafter in  
15 an amount within the jurisdiction of this court. No claim is being made for mental and emotional  
16 distress over and above that usually associated with the discrimination and physical injuries  
17 claimed, and no expert testimony regarding this usual mental and emotional distress will be  
18 presented at trial in support of the claim for damages.

19        28. Defendants', and each of their, failure to remove the architectural barriers  
20 complained of herein created, at the time of plaintiff CRAIG YATES's first visit to said public  
21 accommodation, and continues to create continuous and repeated exposure to substantially the  
22 same general harmful conditions which caused plaintiff CRAIG YATES harm as stated herein.

23        29. Plaintiff CRAIG YATES was denied his rights to equal access to a public facility  
24 by defendants WOO JING HING; and LING KUEN, because defendants WOO JING HING; and  
25 LING KUEN maintained a restaurant without access for persons with physical disabilities to its  
26 facilities, including but not limited to the entrance, signage and restroom, and other public areas as  
27 stated herein, and continue to the date of filing this complaint to deny equal access to plaintiff and  
28 other persons with physical disabilities in these and other ways.



1       30. On information and belief, construction alterations carried out by defendants have  
2 also triggered access requirements under both California law and the Americans with Disabilities  
3 Act of 1990.

4       31. Plaintiff, as described hereinbelow, seeks injunctive relief to require the J&E to be  
5 made accessible to meet the requirements of both California law and the Americans with  
6 Disabilities Act of 1990, whichever is more restrictive, so long as defendants operate the J&E as a  
7 public facility.

8       32. Plaintiff seeks damages for violation of his civil rights on June 20, 2010,  
9 November 11, 2010 and December 7, 2010 and seeks statutory damages of not less than \$4,000,  
10 pursuant to Civil Code §52(a) or alternatively \$1000 pursuant to Civil Code §54.3, for each day  
11 after his visit that the trier of fact (court/jury) determines was the date that some or all remedial  
12 work should have been completed under the standard that the landlord and tenant had an ongoing  
13 duty to identify and remove architectural barriers where it was readily achievable to do so, which  
14 deterred plaintiff CRAIG YATES from returning to the subject public accommodation because of  
15 his knowledge and/or belief that neither some or all architectural barriers had been removed and  
16 that said premises remains inaccessible to persons with disabilities whether a wheelchair user or  
17 otherwise.

18       33. On information and belief, defendants have been negligent in their affirmative duty  
19 to identify the architectural barriers complained of herein and negligent in the removal of some or  
20 all of said barriers.

21       34. Because of defendants' violations, plaintiff and other persons with physical  
22 disabilities are unable to use public facilities such as those owned and operated by defendants on a  
23 "full and equal" basis unless such facility is in compliance with the provisions of the Americans  
24 with Disabilities Act of 1990, Civil Code §54.1 and Health & Safety Code §19955, *et seq.* and  
25 other accessibility law as plead herein. Plaintiff seeks an order from this court compelling  
26 defendants to make the J&E accessible to persons with disabilities.

1        35. On information and belief, defendants have intentionally undertaken to modify and  
2 alter existing building(s), and have failed to make them comply with accessibility requirements  
3 under the requirements of ADAAG and California Building Code. The acts and omission of  
4 defendants, and each of them, in failing to provide the required accessible public facilities at the  
5 time of plaintiff's visit and injuries, indicate actual and implied malice toward plaintiff, and  
6 despicable conduct carried out by defendants, and each of them, with a willful and conscious  
7 disregard for the rights and safety of plaintiff and other similarly situated persons, and justify a  
8 trebling of damages as provided by Civil Code §§52(a) and 54.3, in order to make a more  
9 profound example of defendants, and each of them, to other operators and landlords of other  
10 restaurants and other public facilities, and to punish defendants and to carry out the purposes of  
11 the Civil Code §§ 51, 51.5 and 54.

12        36. Plaintiff is informed and believes and therefore alleges that defendants WOO JING  
13 HING; and LING KUEN, and each of them, caused the subject building(s) which constitute the  
14 J&E to be constructed, altered and maintained in such a manner that persons with physical  
15 disabilities were denied full and equal access to, within and throughout said building(s) of the  
16 J&E and were denied full and equal use of said public facilities. Furthermore, on information and  
17 belief, defendants have continued to maintain and operate said restaurant and/or its building(s) in  
18 such conditions up to the present time, despite actual and constructive notice to such defendants  
19 that the configuration of J&E and/or its building(s) is in violation of the civil rights of persons  
20 with physical disabilities, such as plaintiff CRAIG YATES, and other members of the disability  
21 community. Such construction, modification, ownership, operation, maintenance and practices of  
22 such public facilities are in violation of Civil Code §§51, 51.5 and 54, Health and Safety Code  
23 §19955, and the ADA, 42 U.S.C. §12101, *et seq.*

1        37. On personal knowledge, information and belief, the basis of defendants' actual and  
2 constructive notice that the physical configuration of the facilities including, but not limited to,  
3 architectural barriers constituting the J&E Building and/or building(s) was in violation of the civil  
4 rights of persons with physical disabilities, such as plaintiff, includes, but is not limited to,  
5 communications with invitees and guests, plaintiff CRAIG YATES himself, sponsors of  
6 conferences, owners of other restaurants, hotels, motels and businesses, notices they obtained  
7 from governmental agencies upon modification, improvement, or substantial repair of the subject  
8 premises and other properties owned by these defendants, newspaper articles and trade  
9 publications regarding the Americans with Disabilities Act of 1990 and other access laws, public  
10 service announcements by former U.S. Attorney General Janet Reno between 1993 and 2000, and  
11 other similar information. Defendants' failure, under state and federal law, to make the J&E  
12 accessible is further evidence of defendants' conscious disregard for the rights of plaintiff and  
13 other similarly situated persons with disabilities. Despite being informed of such effect on  
14 plaintiff and other persons with physical disabilities due to the lack of accessible facilities,  
15 defendants, and each of them, knowingly and willfully refused to take any steps to rectify the  
16 situation and to provide full and equal access for plaintiff and other persons with physical  
17 disabilities to the subject building. Said defendants, and each of them, have continued such  
18 practices, in conscious disregard for the rights of plaintiff and other persons with physical  
19 disabilities, up to the date of filing of this complaint, and continuing thereon. Defendants had  
20 further actual knowledge of the architectural barriers referred to herein by virtue of the demand  
21 letter addressed to the defendants and served concurrently with the summons and complaint. Said  
22 conduct, with knowledge of the effect it was and is having on plaintiff and other persons with  
23 physical disabilities, constitutes despicable conduct in conscious disregard of the rights and safety  
24 of plaintiff and of other similarly situated persons, justifying the imposition of treble damages per  
25 Civil Code §§52 and 54.3.

26        38. Plaintiff CRAIG YATES and the disability community, consisting of persons with  
27 disabilities, would, could and will return to the subject public accommodation when it is made  
28 accessible to persons with disabilities.

**I. FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A PUBLIC ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990 (42 U.S.C. §12101, *et seq.*)**  
 (On behalf of Plaintiff CRAIG YATES, an individual and Against Defendants WOO JING HING; and LING KUEN, inclusive)  
 (42 U.S.C. §12101, *et seq.*)

39. Plaintiff pleads and incorporates by reference, as if fully set forth again herein, the allegations contained in paragraphs 1 through 38 of this complaint.

40. Pursuant to law, in 1990, the United States Congress made findings per 42 U.S.C. §12101 regarding persons with physical disabilities, finding that laws were needed to more fully protect:

some 43 million Americans with one or more physical or mental disabilities; [that] historically society has tended to isolate and segregate individuals with disabilities; [that] such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem; [that] the nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living and economic self-sufficiency for such individuals; [and that] the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous.

41. Congress stated as its purpose in passing the Americans with Disabilities Act of 1990 (42 U.S.C. §12102):

It is the purpose of this act (1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities; (2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities; (3) to ensure that the Federal government plays a central role in enforcing the standards established in this act on behalf of individuals with disabilities; and (4) to invoke the sweep of Congressional authority, including the power to enforce the 14th Amendment and to regulate commerce, in order to address the major areas of discrimination faced day to day by people with disabilities.



1        42. As part of the Americans with Disabilities Act of 1990, Public Law 101-336  
 2 (hereinafter the "ADA"), Congress passed "Title III - Public Accommodations and Services  
 3 Operated by Private Entities" (Section 301 42 U.S.C. §12181, *et seq.*). Among the public  
 4 accommodations identified for purposes of this title was:

5            (7) PUBLIC ACCOMMODATION - The following private  
 6 entities are considered public accommodations for purposes of this  
 title, if the operations of such entities affect commerce -

7            ---

8            (B) a restaurant, bar or other establishment serving food or  
 9 drink.

10           42 U.S.C. §12181(7)(B)

11        43. Pursuant to §302, 42 U.S.C. §12182, "No individual shall be discriminated against  
 12 on the basis of disability in the full and equal enjoyment of the goods, services, facilities,  
 13 privileges, advantages, or accommodations of any place of public accommodation by any person  
 14 who owns, leases, or leases to, or operates a place of public accommodation."

15        44. The specific prohibitions against discrimination set forth in §302(b)(2)(a),  
 16 42 U.S.C. §12182(b)(2)(a) are:

17            (I) the imposition or application of eligibility criteria  
 18 that screen out or tend to screen out an individual with a disability  
 19 or any class of individuals with disabilities from fully and equally  
 20 enjoying any goods, services, facilities, privileges, advantages, or  
 accommodations, unless such criteria can be shown to be necessary  
 for the provision of the goods, services, facilities, privileges,  
 advantages, or accommodations being offered;

21            (ii) a failure to make reasonable modifications in  
 22 policies, practices, or procedures, when such modifications are  
 23 necessary to afford such goods, services, facilities, privileges,  
 24 advantages or accommodations to individuals with disabilities,  
 unless the entity can demonstrate that making such modifications  
 would fundamentally alter the nature of such goods, services,  
 facilities, privileges, advantages, or accommodations;

25            (iii) a failure to take such steps as may be necessary to  
 26 ensure that no individual with a disability is excluded, denied  
 27 services, segregated or otherwise treated differently than other  
 28 individuals because of the absence of auxiliary aids and services,  
 unless the entity can demonstrate that taking such steps would  
 fundamentally alter the nature of the good, service, facility,  
 privilege, advantage, or accommodation being offered or would  
 result in an undue burden;

(iv) a failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities . . . where such removal is readily achievable; and

(v) where an entity can demonstrate that the removal of a barrier under clause (iv) is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages or accommodations available through alternative methods if such methods are readily achievable.

The acts of defendants set forth herein were a violation of plaintiff's rights under the ADA, Public Law 101-336, and the regulations promulgated thereunder, 28 CFR Part 36, *et seq.* - Effective January 31, 1993, the standards of the ADA were also incorporated into California Civil Code §51, making available the damage remedies incorporated into Civil Code §51 and 52(a) and 54.3.

45. The removal of the barriers complained of by plaintiff as hereinabove alleged were at all times after January 26, 1992 "readily achievable" as to the subject building(s) of J&E pursuant to 42 U.S.C. §12182 (b)(2)(A)(i)-(iv). On information and belief, if the removal of all the barriers complained of herein together was not "readily achievable," the removal of each individual barrier complained of herein was "readily achievable." On information and belief, defendants' failure to remove said barriers was likewise due to discriminatory practices, procedures and eligibility criteria, as defined by 42 U.S.C. §12182 (b)(2)(A)(i) and (ii).

46. Per 42 U.S.C. §12181 (9), the term "readily achievable" means "easily accomplishable and able to be carried out without much difficulty or expense." The statute defines relative "expense" in part in relation to the total financial resources of the entities involved. Plaintiff alleges that properly repairing, modifying, or altering each of the items that plaintiff complains of herein were and are "readily achievable" by the defendants under the standards set forth under §301(9) of the Americans with Disabilities Act. Furthermore, if it was not "readily achievable" for defendants to remove each of such barriers, defendants have failed to make the required services available through alternative methods which were readily achievable.

47. On information and belief, construction work on, and modifications of, the subject building(s) of J&E occurred after the compliance date for the Americans with Disabilities Act, January 26, 1992, independently triggering access requirements under Title III of the ADA.

1        48. Pursuant to the Americans with Disabilities Act of 1990, 42 U.S.C. §12188, *et*  
2 *seq.*, plaintiff is entitled to the remedies and procedures set forth in §204(a) of the Civil Rights  
3 Act of 1964, 42 U.S.C. 2000(a)-3(a), as plaintiff is being subjected to discrimination on the basis  
4 of disability in violation of this title or have reasonable grounds for believing that plaintiff is about  
5 to be subjected to discrimination in violation of §302. Plaintiff is deterred from returning to or  
6 making use of the public facilities complained of herein so long as the premises and defendants'  
7 policies bar full and equal use by persons with physical disabilities.

8        49. 42 U.S.C. 12188 (a)(1) states: "Nothing in this section shall require a person with a  
9 disability to engage in a futile gesture if such person has actual notice that a person or  
10 organization covered by this title does not intend to comply with its provisions." Pursuant to this  
11 section, plaintiff CRAIG YATES has not returned to defendants' premises since on or about  
12 December 7, 2010, but on information and belief, alleges that defendants have continued to  
13 violate the law and deny the rights of plaintiff and of other persons with physical disabilities to  
14 access this public accommodation. Pursuant to 42 USC §12188(a)(2), "In cases of violations of  
15 §302(b)(2)(A)(iv) . . . injunctive relief shall include an order to alter facilities to make such  
16 facilities readily accessible to and usable by individuals with disabilities to the extent required by  
17 this title."

18        50. Plaintiff seeks relief pursuant to remedies set forth in §204(a) of the Civil Rights  
19 Act of 1964 (42 U.S.C. 2000(a)-3(a)), and pursuant to federal regulations adopted to implement  
20 the Americans with Disabilities Act of 1990, including but not limited to an order granting  
21 injunctive relief and attorneys' fees. Plaintiff will seek attorneys' fees conditioned upon being  
22 deemed to be the prevailing party.

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**II. SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND EQUAL ACCESS  
IN VIOLATION OF CALIFORNIA CIVIL CODE §§54, 54.1 AND 54.3, ET SEQ.**

(On Behalf of Plaintiff CRAIG YATES, an individual and Against Defendants WOO  
JING HING; and LING KUEN, inclusive)

(California Civil Code §§54, 54.1, 54.3, *et seq.*)

51. Plaintiff repleads and incorporates by reference as if fully set forth again herein, the  
allegations contained in paragraphs 1 through 50 of this complaint.

52. At all times relevant to this action, California Civil Code §54 has provided that  
persons with physical disabilities are not to be discriminated against because of physical handicap  
or disability. This section provides that:

(a) Individuals with disabilities . . . have the same rights as  
the general public to full and free use of the streets, highways,  
sidewalks, walkways, public buildings, medical facilities, including  
hospitals, clinics, and physicians' offices, and other public places.

53. California Civil Code §54.1 provides that persons with disabilities shall not be  
denied full and equal access to places of public accommodation or facilities:

(a)(1) Individuals with disabilities shall be entitled to full  
and equal access, as other members of the general public, to  
accommodations, advantages, facilities, medical facilities, including  
hospitals, clinics, and physicians' offices, and privileges of all  
common carriers, airplanes, motor vehicles, railroad trains,  
motorbuses, streetcars, boats, or any other public conveyances or  
modes of transportation (whether private, public, franchised,  
licensed, contracted, or otherwise provided), telephone facilities,  
adoption agencies, private schools, hotels, lodging places, places of  
public accommodation, amusement or resort, and other places to  
which the general public is invited, subject only to the conditions  
and limitations established by law, or state or federal regulation, and  
applicable alike to all persons.

Civil Code §54.1(a)(1)

54. California Civil Code §54.1 further provides that a violation of the Americans with  
Disabilities Act of 1990 constitutes a violation of section 54.1:

(d) A violation of the right of an individual under the  
Americans with Disabilities Act of 1990 (Public Law 101-336) also  
constitutes a violation of this section, and nothing in this section  
shall be construed to limit the access of any person in violation of  
that act.

Civil Code §54.1(d)



1        55. Plaintiff CRAIG YATES is a person within the meaning of Civil Code §54.1  
 2 whose rights have been infringed upon and violated by the defendants, and each of them, as  
 3 prescribed by Civil Code §§54 and 54.1. Each specific architectural barrier which defendants  
 4 knowingly and willfully fail and refuse to remove constitutes a separate act in violation of Civil  
 5 Code §§54 and 54.1. Plaintiff has been and continue to be denied full and equal access to  
 6 defendants' J&E. As a legal result, plaintiff is entitled to seek damages pursuant to a court or jury  
 7 determination, in accordance with California Civil Code §54.3(a) for each day on which he visited  
 8 or have been deterred from visiting the restaurant because of his knowledge and belief that the  
 9 restaurant is inaccessible to persons with disabilities. California Civil Code §54.3(a) provides:

10            Any person or persons, firm or corporation, who denies or interferes  
 11 with admittance to or enjoyment of the public facilities as specified  
 12 in Sections 54 and 54.1 or otherwise interferes with the rights of an  
 13 individual with a disability under Sections 54, 54.1 and 54.2 is  
 14 liable for each offense for the actual damages and any amount as  
 15 may be determined by a jury, or the court sitting without a jury, up  
 16 to a maximum of three times the amount of actual damages but in  
 17 no case less than . . . one thousand dollars (\$1,000) and . . .  
 18 attorney's fees as may be determined by the court in addition  
 19 thereto, suffered by any person denied any of the rights provided in  
 20 Sections 54, 54.1 and 54.2.

21            Civil Code §54.3(a)

22        56. On or about June 20, 2010, November 11, 2010 and December 7, 2010, plaintiff  
 23 CRAIG YATES suffered violations of Civil Code §§54 and 54.1 in that plaintiff CRAIG YATES  
 24 was denied access to the entrance, signage and restroom and other public facilities as stated herein  
 25 at the J&E and on the basis that plaintiff CRAIG YATES was a person with physical disabilities.

26        57. As a result of the denial of equal access to defendants' facilities due to the acts and  
 27 omissions of defendants, and each of them, in owning, operating and maintaining these subject  
 28 public facilities, plaintiff suffered violations of plaintiff's civil rights, including but not limited to  
 rights under Civil Code §§54, 54.1 and 54.3, and plaintiff CRAIG YATES suffered physical  
 discomfort, bodily injury on or about June 20, 2010, including, but not limited to, fatigue, stress,  
 strain and pain in wheeling and attempting to and/or transferring up, on, down, to, over, around  
 and through architectural barriers.

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1 Specifically, as a legal result of defendants negligence in the design, construction and  
2 maintenance of the existing east door entrance, plaintiff suffered continuous, repetitive and  
3 cumulative trauma to his right upper extremity while attempting to gain access into the subject  
4 restaurant.

5 58. Further, plaintiff CRAIG YATES suffered mental distress, mental suffering, mental  
6 anguish, which includes shame, humiliation, embarrassment, frustration, anger, disappointment  
7 and worry, all of which are expectedly and naturally associated with a denial of access to a person  
8 with physical disabilities, all to plaintiff's damages as hereinafter stated. Defendants' actions and  
9 omissions to act constituted discrimination against plaintiff on the sole basis that plaintiff is a  
10 person or an entity that represents persons with physical disabilities and unable, because of the  
11 architectural barriers created and maintained by the defendants in violation of the subject laws, to  
12 use the public facilities hereinabove described on a full and equal basis as other persons.

13 59. Plaintiff has been damaged by defendants', and each of their, wrongful conduct and  
14 seeks the relief that is afforded by Civil Code §§54 and 54.1, 54.3 for violation of plaintiff's rights  
15 as a person or an entity that represents persons with physical disabilities on or about June 20,  
16 2010, November 11, 2010 and December 7, 2010, and on a continuing basis since then, including  
17 statutory damages, a trebling of all of actual damages, general and special damages available  
18 pursuant to §54.3 of the Civil Code according to proof.

19 60. As a result of defendants', and each of their, acts and omissions in this regard,  
20 plaintiff has been required to incur legal expenses and hire attorneys in order to enforce  
21 plaintiff's rights and enforce the provisions of the law protecting access for persons with physical  
22 disabilities and prohibiting discrimination against persons with physical disabilities. Pursuant to  
23 the provisions of Civil Code §54.3, plaintiff therefore will seek recovery in this lawsuit for all  
24 reasonable attorneys' fees and costs incurred if deemed the prevailing party. Additionally,  
25 plaintiff's lawsuit is intended not only to obtain compensation for damages to plaintiff, but also to  
26 compel the defendants to make their facilities accessible to all members of the public with  
27 disabilities, justifying public interest attorneys' fees, if deemed the prevailing party, pursuant to  
28 the provisions of §1021.5 of the Code of Civil Procedure.

1 **III. THIRD CAUSE OF ACTION FOR DENIAL OF ACCESSIBLE SANITARY**  
 2 **FACILITIES IN VIOLATION OF HEALTH & SAFETY CODE §19955, *ET. SEQ.***  
 3 (On Behalf of Plaintiff CRAIG YATES, an individual and Against Defendants WOO  
 JING HING; and LING KUEN, inclusive)  
 (Health & Safety Code §19955, *et seq.*)

4 61. Plaintiff repleads and incorporates by reference, as if fully set forth again herein,  
 5 the allegations contained in paragraphs 1 through 60 of this complaint.

6 62. Health & Safety Code §19955 provides in pertinent part:

7 The purpose of this part is to insure that public accommodations or  
 8 facilities constructed in this state with private funds adhere to the  
 provisions of Chapter 7 (commencing with Sec. 4450) of Division 5  
 9 of Title 1 of the Government Code. For the purposes of this part  
 “public accommodation or facilities” means a building, structure,  
 10 facility, complex, or improved area which is used by the general  
 public and shall include auditoriums, hospitals, theaters, restaurants,  
 11 hotels, motels, stadiums, and convention centers. When sanitary  
 facilities are made available for the public, clients or employees in  
 12 such accommodations or facilities, they shall be made available for  
 the handicapped.

13 63. Health & Safety Code §19956, which appears in the same chapter as §19955,  
 14 provides in pertinent part, “accommodations constructed in this state shall conform to the  
 15 provisions of Chapter 7 (commencing with Sec. 4450) of Division 5 of Title 1 of the Government  
 16 Code . . . .” Health & Safety Code §19956 was operative July 1, 1970, and is applicable to all  
 17 public accommodations constructed or altered after that date. On information and belief, portions  
 18 of the J&E and/or of the building(s) were constructed and/or altered after July 1, 1970, and  
 19 substantial portions of the J&E Building and/or the building(s) had alterations, structural repairs,  
 20 and/or additions made to such public accommodations after July 1, 1970, thereby requiring said  
 21 building and/or building to be subject to the requirements of Part 5.5, §19955, *et seq.*, of the  
 22 Health & Safety Code upon such alteration, structural repairs or additions per Health & Safety  
 23 Code §19959.

24 64. Pursuant to the authority delegated by Government Code §4450, *et seq.*, the State  
 25 Architect promulgated regulations for the enforcement of these provisions. Effective July 1,  
 26 1982, Title 24 of the California Building Standards Code adopted the California State Architect’s  
 27 Regulations and these regulations must be complied with as to any alterations and/or  
 28 modifications of J&E and/or the building(s) occurring after that date.



1 Construction changes occurring prior to this date but after July 1, 1970 triggered access  
2 requirements pursuant to the "ASA" requirements, the American Standards Association  
3 Specifications, A117.1-1961. On information and belief, at the time of the construction and  
4 modification of said building, all buildings and facilities covered were required to conform to  
5 each of the standards and specifications described in the American Standards Association  
6 Specifications and/or those contained in Title 24 of the California Building Standards Code.

7 65. Restaurants such as the J&E are "public accommodations or facilities" within the  
8 meaning of Health & Safety Code §19955, *et seq.*

9 66. As a result of the actions and failure to act of defendants, and as a result of the  
10 failure to provide proper and legally handicapped-accessible public facilities, plaintiff was denied  
11 plaintiff's rights to full and equal access to public facilities and suffered a loss of plaintiff's civil  
12 rights and plaintiff's rights as a person with physical disabilities to full and equal access to public  
13 facilities.

14 67. Attorneys' Fees -- As a result of defendants' acts and omissions in this regard,  
15 plaintiff has been required to incur legal expenses and hire attorneys in order to enforce plaintiff's  
16 civil rights and enforce provisions of the law protecting access for the persons with physical  
17 disabilities and prohibiting discrimination against the persons with physical disabilities, and to  
18 take such action both in plaintiff's own interests and in order to enforce an important right  
19 affecting the public interest. Plaintiff, therefore, seeks in this lawsuit the recovery of all  
20 reasonable attorneys' fees incurred, pursuant to the provisions of the Code of Civil Procedure  
21 §1021.5. Plaintiff additionally seeks attorneys' fees pursuant to Health & Safety Code §19953  
22 and Civil Code §§54.3 and/or in the alternative, plaintiff will seek attorneys' fees, costs and  
23 litigation expenses pursuant to §204(a) of the Civil Rights Act of 1964 (42 U.S.C. 200(a)-3(a)).  
24 Plaintiff will seek attorneys' fees conditioned upon being deemed to be the prevailing party.

25 68. Plaintiff seeks injunctive relief for an order compelling defendants, and each of  
26 them, to make the subject place of public accommodation readily accessible to and usable by  
27 persons with disabilities.

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1 **IV. FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO FULL AND**  
 2 **EQUAL ACCOMMODATIONS, ADVANTAGES, FACILITIES, PRIVILEGES**  
 3 **AND/OR SERVICES IN VIOLATION OF CALIFORNIA CIVIL CODE §51, ET**  
 4 **SEO. (THE UNRUH CIVIL RIGHTS ACT)**  
 (On Behalf of Plaintiff CRAIG YATES, an individual and Against Defendants WOO  
 JING HING; and LING KUEN, inclusive)  
 (Civil Code §51, 51.5)

5 69. Plaintiff repleads and incorporates by reference, as if fully set forth again herein,  
 6 the allegations contained in paragraphs 1 through 68 of this complaint.

7 70. Defendants' actions and omissions and failure to act as a reasonable and prudent  
 8 public accommodation in identifying, removing and/or creating architectural barriers, policies,  
 9 practices and/or procedures violates §51 of the Civil Code, the Unruh Civil Rights Act. The  
 10 Unruh Act provides:

11 This section shall be known, and may be cited, as the Unruh  
 12 Civil Rights Act.

13 All persons within the jurisdiction of this state are free and  
 14 equal, and no matter what their sex, race, color, religion, ancestry,  
 15 national origin, or **disability** are entitled to the full and equal  
 accommodations, advantages, facilities, privileges, or services in all  
 business establishments of every kind whatsoever.

16 This section shall not be construed to confer any right or  
 17 privilege on a person that is conditioned or limited by law or that is  
 applicable alike to persons of every sex, color, race, religion,  
 ancestry, national origin, or **disability**.

18 Nothing in this section shall be construed to require any  
 19 construction, alteration, repair, structural or otherwise, or  
 20 modification of any sort whatsoever, beyond that construction,  
 21 alteration, repair, or modification that is otherwise required by other  
 22 provisions of law, to any new or existing establishment, facility,  
 23 building, improvement, or any other structure . . . nor shall anything  
 in this section be construed to augment, restrict, or alter in any way  
 the authority of the State Architect to require construction,  
 alteration, repair, or modifications that the State Architect otherwise  
 possesses pursuant to other . . . laws.

24 A violation of the right of any individual under the  
 Americans with Disabilities Act of 1990 (Public Law 101-336) shall  
 also constitute a violation of this section.

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1 As the Unruh Act incorporates violations of the Americans with Disabilities Act of 1990, the  
 2 “intent” of the defendants in not complying with barrier removal is not an issue. Hence, the  
 3 failure on the parts of defendants, as reasonable and prudent public accommodations, in acting or  
 4 failing to act to identify and remove barriers can be construed as a “negligent per se” act of  
 5 defendants, and each of them.

6 71. The acts and omissions of defendants stated herein are discriminatory in nature and  
 7 in violation of Civil Code §51.5:

8 No business establishment of any kind whatsoever shall  
 9 discriminate against, boycott or blacklist, refuse to buy from, sell to,  
 10 or trade with any person in this state because of the race, creed,  
 11 religion, color, national origin, sex, or **disability** of the person or of  
 the person’s partners, members, stockholders, directors, officers,  
 managers, superintendents, agents, employees, business associates,  
 suppliers, or customers.

12 As used in this section, “person” includes any person, firm  
 13 association, organization, partnership, business trust, corporation,  
 limited liability company, or company.

14 Nothing in this section shall be construed to require any  
 15 construction, alteration, repair, structural or otherwise, or  
 16 modification of any sort whatsoever, beyond that construction,  
 17 alteration, repair or modification that is otherwise required by other  
 18 provisions of law, to any new or existing establishment, facility,  
 19 building, improvement, or any other structure . . . nor shall anything  
 in this section be construed to augment, restrict or alter in any way  
 the authority of the State Architect to require construction,  
 alteration, repair, or modifications that the State Architect otherwise  
 possesses pursuant to other laws.

20 72. Defendants’ acts and omissions as specified have denied to the plaintiff full and  
 21 equal accommodations, advantages, facilities, privileges and services in a business establishment,  
 22 on the basis of physical disability, in violation of Civil Code §§51 and 51.5, the Unruh Civil  
 23 Rights Act. Furthermore, pursuant to the 1992 amendment to California Civil Code §51, “A  
 24 violation of the right of any individual under the Americans with Disabilities Act of 1990 (Public  
 25 Law 101-336) shall also constitute a violation of this section.” Plaintiff accordingly incorporates  
 26 the entirety of his above cause of action for violation of the Americans with Disabilities Act at  
 27 §39, *et seq.*, as if replied herein.

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1       73. As a result of the denial of equal access to defendants' facilities due to the acts and  
2 omissions of defendants, and each of them, in owning, operating and maintaining these subject  
3 public facilities, plaintiff suffered violations of plaintiff's civil rights, including but not limited to  
4 rights under Civil Code §§54, 54.1 and 54.3, and plaintiff CRAIG YATES suffered physical  
5 discomfort, bodily injury on or about June 20, 2010, including, but not limited to, fatigue, stress,  
6 strain and pain in wheeling and attempting to and/or transferring up, on, down, to, over, around  
7 and through architectural barriers. Specifically, as a legal result of defendants negligence in the  
8 design, construction and maintenance of the existing east door entrance, plaintiff suffered  
9 continuous, repetitive and cumulative trauma to his right upper extremity while attempting to gain  
10 access into the subject restaurant.

11       74. Further, plaintiff CRAIG YATES suffered mental distress, mental  
12 suffering, mental anguish, which includes shame, humiliation, embarrassment, frustration, anger,  
13 disappointment and worry, all of which are expectedly and naturally associated with a denial of  
14 access to a person with physical disabilities, all to plaintiff's damages as hereinafter stated.  
15 Defendants' actions and omissions to act constituted discrimination against plaintiff on the sole  
16 basis that plaintiff is a person or an entity that represents persons with physical disabilities and  
17 unable, because of the architectural barriers created and maintained by the defendants in violation  
18 of the subject laws, to use the public facilities hereinabove described on a full and equal basis as  
19 other persons.

20       75. Plaintiff CRAIG YATES is entitled to the rights and remedies of §52(a)  
21 of the Civil Code, including trebling of actual damages (defined by §52(h) of the Civil Code to  
22 mean "special and general damages"), as well as to reasonable attorneys' fees and costs, as is  
23 allowed by statute, according to proof if deemed to be the prevailing party.

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1 **PRAYER:**

2 Plaintiff prays that this court award damages and provide relief as follows:

3 **I. PRAYER FOR FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A**  
 4 **PUBLIC ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH**  
 5 **DISABILITIES ACT OF 1990 (42 U.S.C. §1 2101, *et seq.*)**

6 (On Behalf of Plaintiff CRAIG YATES, an individual and Against Defendants WOO  
 7 JING HING; and LING KUEN, inclusive)  
 8 (42 U.S.C. §12101, *et seq.*)

9 1. For injunctive relief, compelling defendants WOO JING HING; and LING KUEN,  
 10 inclusive, to make the J&E, located at 2537 24<sup>th</sup> Street, San Francisco, California, readily  
 11 accessible to and usable by individuals with disabilities, per 42 U.S.C §12181, *et seq.*, and to  
 12 make reasonable modifications in policies, practice, eligibility criteria and procedures so as to  
 13 afford full access to the goods, services, facilities, privileges, advantages and accommodations  
 14 being offered.

15 2. For attorneys' fees, litigation expenses and costs of suit, if plaintiff is deemed the  
 16 prevailing party; and

17 3. For such other and further relief as the court may deem proper.

18 **II. PRAYER FOR SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND**  
 19 **EQUAL ACCESS IN VIOLATION OF CALIFORNIA CIVIL CODE §§54, 54.1**  
 20 **AND 54.3, *ET SEQ.***

21 (On Behalf of Plaintiff CRAIG YATES, an individual and Against  
 22 Defendants WOO JING HING; and LING KUEN, inclusive)  
 23 (California Civil Code §§54, 54.1, 54.3, *et seq.*)

24 1. For injunctive relief, compelling defendants WOO JING HING; and LING KUEN,  
 25 inclusive, to make the J&E, located at 2537 24<sup>th</sup> Street, San Francisco, California, readily  
 26 accessible to and usable by individuals with disabilities, per state law.

27 2. Statutory damages as afforded by Civil Code §54.3 for the date of incident and for  
 28 each occasion on which plaintiff was deterred from returning to the subject public  
 accommodation.

3 Attorneys' fees pursuant to Civil Code §54.3 and Code of Civil Procedure §1021.5,  
 if plaintiffs are deemed the prevailing party;

4. Treble damages pursuant to Civil Code §54.3;

5. General damages according to proof;



6. For all costs of suit;
7. Prejudgment interest pursuant to Civil Code §3291; and
8. Such other and further relief as the court may deem just and proper.

**III. PRAYER FOR THIRD CAUSE OF ACTION FOR DENIAL OF ACCESSIBLE  
SANITARY FACILITIES IN VIOLATION OF HEALTH & SAFETY CODE  
§19955, ET. SEQ.**

(On Behalf of Plaintiff CRAIG YATES, an individual and Against Defendants WOO  
JING HING; and LING KUEN, inclusive)  
(Health & Safety code §19955, *et seq.*)

1. For injunctive relief, compelling defendants WOO JING HING; and LING KUEN,  
inclusive, to make the J&E, located at 2537 24<sup>th</sup> Street, San Francisco, California, readily  
accessible to and usable by individuals with disabilities, per state law.

2. For attorneys' fees pursuant to Code of Civil Procedure §1021.5, and/or,  
alternatively, Health & Safety Code §19953, if plaintiff is deemed the prevailing party;

3. For all costs of suit;
4. For prejudgment interest pursuant to Civil Code §3291;
5. Such other and further relief as the court may deem just and proper.

**IV. PRAYER FOR FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO  
FULL AND EQUAL ACCOMMODATIONS, ADVANTAGES, FACILITIES,  
PRIVILEGES AND/OR SERVICES IN VIOLATION OF CALIFORNIA CIVIL  
CODE §51, ET SEQ. (THE UNRUH CIVIL RIGHTS ACT)**

(On Behalf of Plaintiff CRAIG YATES, an individual and Against  
Defendants WOO JING HING; and LING KUEN, inclusive)  
(California Civil Code §§51, 51.5, *et seq.*)

1. All statutory damages as afforded by Civil Code §52(a) for the date of incident and  
for each occasion on which plaintiff was deterred from returning to the subject public  
accommodation;

2. Attorneys' fees pursuant to Civil Code §52(a), if plaintiff is deemed the prevailing  
party;

3. General damages according to proof;
4. Treble damages pursuant to Civil Code §52(a);

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5. For all costs of suit;
6. Prejudgment interest pursuant to Civil Code §3291; and
7. Such other and further relief as the court may deem just and proper.

Dated: 12/15/10, 2010

THOMAS E. FRANKOVICH,  
***A PROFESSIONAL LAW CORPORATION***

By: 

THOMAS E. FRANKOVICH  
Attorneys for Plaintiff CRAIG YATES, an individual

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a jury for all claims for which a jury is permitted.

Dated: 12/15/10, 2010

THOMAS E. FRANKOVICH,  
***A PROFESSIONAL LAW CORPORATION***

By: 

THOMAS E. FRANKOVICH  
Attorneys for Plaintiff CRAIG YATES, an individual

Craig Yates  
1004 Los Gamos Road, Unit E  
San Rafael, CA 94903

July 20, 2010

Manager  
J&E Café  
2537 24<sup>th</sup> Street  
San Francisco, CA 94101

Dear Manager of J&E Café:

Recently, I visited J&E Café. The food was quite good and reasonably priced. That part of my experience was good. However, there are a few problems that need your immediate attention. You see, I use a wheelchair. Wheelchair users like me (as I did) have a problem with narrow doors and no strike side. Strike side is the room to the side of the door to allow a wheelchair to angle in. If the door is closed it's impossible to get in. The other entrance has a step. I couldn't get to the restroom because of the 2 levels. That part of my experience was not good.

I thought the landlord and the tenant should know about this. That's why I wrote this identical letter to both of you. It's like letting the right hand know what the left hand is doing! If you both put your heads and hands together, I know the two of you can fix this problem.

You need to learn what needs to be done and do it now. So to help you, please call Pacific ADA and IT Center in Oakland at 1-800-949-4232, and ask them to send you all the information they have on access. Remember, wheelchair users have an old saying: "Access delayed is Access denied!" you should do your own evaluation for access. You understand, right? Anyway, please write me when you get this letter, tell me exactly what will be done and make me a promise that you will take care of this right away. Give me a date. If you are not the one in charge or don't have the responsibility to do it, would you make sure this letter goes to the person in charge or who can make decisions on what to do. Thanks!

Sincerely,

  
Craig Yates

Craig Yates  
1004 Los Gamos Road, Unit E  
San Rafael, CA 94903

July 20, 2010

Owner of the Building  
J&E Café  
2537 24<sup>th</sup> Street  
San Francisco, CA 94101


Dear Owner of the Building for J&E Café:

Recently, I visited J&E Café. The food was quite good and reasonably priced. That part of my experience was good. However, there are a few problems that need your immediate attention. You see, I use a wheelchair. Wheelchair users like me (as I did) have a problem with narrow doors and no strike side. Strike side is the room to the side of the door to allow a wheelchair to angle in. If the door is closed it's impossible to get in. The other entrance has a step. I couldn't get to the restroom because of the 2 levels. That part of my experience was not good.

I thought the landlord and the tenant should know about this. That's why I wrote this identical letter to both of you. It's like letting the right hand know what the left hand is doing! If you both put your heads and hands together, I know the two of you can fix this problem.

You need to learn what needs to be done and do it now. So to help you, please call Pacific ADA and IT Center in Oakland at 1-800-949-4232, and ask them to send you all the information they have on access. Remember, wheelchair users have an old saying: "Access delayed is Access denied!" you should do you own evaluation for access. You understand, right? Anyway, please write me when you get this letter, tell me exactly what will be done and make me a promise that you will take care of this right away. Give me a date. If you are not the one in charge or don't have the responsibility to do it, would you make sure this letter goes to the person in charge or who can make decisions on what to do. Thanks!

Sincerely,



Craig Yates